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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

TRAFFICSCHOOL.COM, INC., a  
 California corporation; DRIVERS ED  
 DIRECT, LLC., a California limited  
 liability company,

Plaintiffs,

v.

EDRIVER, INC., ONLINE GURU,  
 INC., FIND MY SPECIALIST, INC.,  
 and SERIOUSNET, INC., California  
 corporations; RAVI K. LAHOTI, an  
 individual; RAJ LAHOTI, an  
 individual; DOES 1 through 10,

Defendants.

Case No. CV 06-7561 PA (CWx)

*The Hon. Percy Anderson*

**AMENDED TRIAL  
 DECLARATION OF  
 KENNETH HOLLANDER**

(Notice of Filing, explaining  
 amendments, filed contemporaneously)

Complaint Filed: November 28, 2006  
 Bench Trial: November 6, 2007

1                                    **DECLARATION OF KENNETH A. HOLLANDER**

2                    I, Kenneth A. Hollander, hereby declare the following:

3  
4                    1.     I am President of Kenneth Hollander Associates, Inc, a firm  
5 specializing in consumer research. I have personal knowledge of the facts  
6 hereinafter stated and, if sworn as a witness, could and would testify competently  
7 thereto.

8  
9                                    **QUALIFICATIONS**

10  
11                    2.     I graduated from The Ohio State University with a Bachelor of  
12 Science degree in Marketing. I then obtained a Masters of Business Administration  
13 degree in Marketing from the University of Missouri.

14  
15                    3.     Prior to starting the Company, my employment history included  
16 the following:

17  
18                    (a)     Research Brand Manager, The Procter & Gamble Company in  
19 which I served in a two-man Experimental Research and  
20 technique Development team responsible for all unique, non-  
21 recurring research issues concerning all P&G brands.

22  
23                    (b)     Associate Research Director, Hallmark Cards in which I was  
24 responsible for all greeting card research as well as acquisitions  
25 and mergers explorations. Much of my professional activity  
26 centered on issues of communications research.

1 (c) Director of Research, Young & Rubicam, Chicago in which I  
2 was responsible for all research for all of the agency's clients:  
3 Allied Van Lines, American Paper Corporation, Armour Dial,  
4 International Harvester, and U.S. Naval Recruiting. Much of my  
5 professional activity centered on issues of communications  
6 research.

7  
8 (d) Vice President, Director of Communications Planning Group,  
9 The Interpublic Group of Companies in which I was responsible  
10 for all communications research for the Coca-Cola Company,  
11 both domestic and international.

12  
13 4. I have lectured on marketing research applications and methods  
14 at the Graduate Schools of Business at Emory University and Georgia State  
15 University in Atlanta, Georgia; the University of Georgia in Athens, Georgia; and  
16 Stanford University in Palo Alto, California.

17  
18 5. At the University of Georgia, I was Chairman of the Board of  
19 Advisors for the Masters of Marketing research Program, and a Distinguished  
20 Practitioner Lecturer in the Department of Marketing.

21  
22 6. I was a Contributing Editor to the textbook, Advertising, and  
23 have spoken at events sponsored by the American Marketing Association, The  
24 Association of National Advertisers, The Advertising Research Foundation, and the  
25 Marketing Research Association.

26  
27 7. I have conducted over 3,000 consumer surveys for many of the  
28 world's largest and most prominent companies including but not limited to:

1 Anheuser Busch, Bank of America, The Coca-Cola Company, Delta Air Lines,  
2 Exxon, Ford Motor Company, General Electric, Hallmark Cards, IBM, Johnson &  
3 Johnson, Kimberly-Clark, Lever Brothers, Mattel, No Nonsense, Mattel, O.M. Scott,  
4 Pillsbury, Quaker Oats, Ralston-Purina, Standard Oil, Texas Instruments, Union  
5 Carbide, Viceroy, Xerox, and Zenith.

6  
7 8. I am have served as an expert witness in the United States  
8 Federal Court System on matters pertaining to survey research, having conducted,  
9 critiqued, or counseled on over 100 intellectual property surveys.

10  
11 THE SURVEY  
12

13 9. I have been asked by counsel for the Defendants to conduct a  
14 rebuttal survey that addresses and corrects the several major defects in the surveys  
15 conducted for the Plaintiffs by Thomas J. Maronick. These surveys purported to  
16 determine consumers' perception of whose website the DMV.ORG Internet  
17 address/link directs them to, and whether DMV.ORG is endorsed by or sponsored  
18 by any governmental agency.

19  
20 10. [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23

24 11. Trial Exhibit 188 shows the questions (both prescreening and  
25 survey) given to respondents. A respondent to this survey could return to prior  
26 questions or stimuli during the survey, consistent with the high involvement nature  
27 of Internet browsing. And, where stimuli were presented, a respondent could scroll  
28

1 down the page, just as if the respondent were sitting at a computer browsing the  
2 Internet.

3  
4 12. [REDACTED]  
5 [REDACTED] Conversely, my rebuttal  
6 survey takes the respondents through four separate DMV.ORG web pages they  
7 could reasonably encounter, and makes it possible to refer to them during the  
8 interview (including scrolling up and down). I determined to use four pages based  
9 upon the fact that the average visitor to the DMV.ORG website sees five pages.  
10 (See Moretti Trial Decl., ¶ 10.) I used as a final page the first page of an advertiser's  
11 website because the question is whether the advertisements on DMV.ORG influence  
12 the purchasing decision, which does not happen until a visitor clicks off of the  
13 DMV.ORG website and into the third party advertiser's website (and completes a  
14 number of steps there). Thus, the rebuttal survey stimuli more closely mimics "real  
15 life."

16  
17 13. Trial Exhibits 183, 184, 186, and 187, in that order, show the  
18 four pages that we showed to California respondents to the Test (not Control,  
19 discussed below) portion of my survey. (For display, the pages are reduced to a  
20 single 8.5x11 sheet; but in the survey, respondents saw only such top portion as they  
21 would see on a normal monitor, with the ability to scroll down the page.)  
22

23 14. [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED] Conversely, my  
28 rebuttal survey asked if respondents perceived that any of the entities shown on the

1 four pages was affiliated with, or sponsored or endorsed by, anyone else, or not.  
2 (Trial Exhibit 188.) If a respondent did perceive affiliation or sponsorship, the  
3 rebuttal survey follow-up question was "With whom?" (Trial Exhibit 188.) These  
4 questions are not leading, and the first question includes the negation choice of none  
5 of the entities being somehow connected. Thus, [REDACTED], the  
6 rebuttal survey asked non-leading questions.

7  
8 15. Experimental Control. [REDACTED]

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED], this rebuttal  
16 survey employed a Test and Control protocol in order to account for what survey  
17 researchers refer to as "noise," that is, any exogenous and unmeasurable respondent  
18 issues such as guessing, going-in knowledge and/or preconceived opinions.

19  
20 16. [REDACTED]  
21 [REDACTED]  
22 [REDACTED]. For  
23 example, it is reasonable to assume that some portion of the relevant universe may  
24 believe that any website providing motor vehicle information, including advertising  
25 for traffic schools, is in some way affiliated with a state agency such as the  
26 California Department of Motor Vehicles. If this is so, and the rebuttal survey  
27 appears to show that it is (see below), then we must first account for this erroneous  
28

1 belief by (a) measuring it and (b) subtracting it from the belief caused by the  
2 litigated domain name DMV.ORG.

3  
4 17. In this survey, certain respondents (the Test Group) saw the  
5 Defendant's four "DMV.ORG" pages (Trial Exhibits 183, 184, 186, 187) and others  
6 (the Control Group) saw exactly the same four web pages except in every instance,  
7 the name "CAR.ORG" replaced the Defendants' "DMV.ORG" nomenclature. By  
8 using CAR.ORG we retained the relevance of the name of the domain to the subject  
9 matter, while removing what plaintiffs assert is the offensive use of the term DMV.  
10 Thus, because the stimuli were identical except for the disputed domain name, the  
11 difference in response to DMV.ORG and CAR.ORG is an improved measure of any  
12 confusion or misunderstanding that can be attributed to use of the DMV.ORG  
13 domain, should it exist. [REDACTED] the rebuttal survey used a  
14 control.

15  
16 18. Trial Exhibits 196, 197, 198, and 187 (187 common to both Test  
17 and Control), in that order, show the control pages that we showed to the distinct  
18 group of California control respondents.

19  
20 19. Possible Guessing. [REDACTED]  
21 [REDACTED] My rebuttal survey instructed respondents not to guess. (Trial Exhibit  
22 188.) Therefore, the rebuttal survey did not suffer from the defect of guessing.

23  
24 20. The rebuttal survey was also conducted by means of an Internet  
25 panel. There were a total of 834 respondents: 490 in the Test Group seeing  
26 "DMV.ORG" and 344 in the Control Group seeing "CAR.ORG." Of these, 58%  
27 (483) were conducted with California residents and 42% (351) with residents of  
28

1 Alabama, Arizona, Maryland, and New Mexico (states whose state agency does not  
2 use the abbreviation DMV).

3  
4 21. These respondents were prescreened to ensure that, among other  
5 things, all were drivers over the age of 18 who, were they to receive a traffic ticket,  
6 would (a) opt to go to an online traffic school and (b) use Google or Yahoo to search  
7 for the on-line traffic school. Trial Exhibit 188, pp. 2-3 shows the full set of  
8 screening questions.

9  
10 22. The questions asked of these 834 respondents were as follows:

11  
12 Question 1:

13  
14 "If you have an opinion, do you think that any of the  
15 entities shown on these four pages is affiliated, with  
16 anyone else, or that none of them are affiliated with  
17 anyone else?" (emphasis added.)  
18

19  
20  
21 Those thinking that there was an affiliation were asked on the next page  
22 question 1A:

23  
24 "Which entity is affiliated with someone else?"

25  
26 and then on the next page asked question 1B:

27  
28 "With whom is it affiliated?"



1 Those with no opinion on question 1 and those thinking none were affiliated on  
2 question 1 were also asked on a new page question 2:

3  
4 "And if you have an opinion, do you think that any of the  
5 entities shown on these four pages is endorsed or  
6 sponsored by anyone else, or do you think that none of  
7 them is endorsed or sponsored by anyone else?"  
8 (emphasis added.)  
9

10 Those thinking that there was an endorsement or sponsorship were asked on the next  
11 page question 2A:

12  
13 "Which entity is endorsed or sponsored by someone else?"  
14

15 and then on the next page asked question 2B:

16  
17 "Who endorses or sponsors it?"  
18

19 23. Because of the open-ended nature of the 1A/AB and 2A/2B  
20 questions, we then worked to tabulate the data into meaningful categories. I chose  
21 the following categories based upon the nature of the open-ended responses I saw:  
22 (1) DMV/state/government; (2) other; (3) don't know/not sure/guessing; (4) none;  
23 (5) Geico/Progressive/insurance companies; (6) DMV.ORG; (7) CAR.ORG. I then  
24 tabulated the responses and prepared an excel chart showing the results by question  
25 (more below on this), then sorted in six columns as follows:  
26  
27  
28

- 1 (a) Totals. The first two columns report total numbers on a  
2 percentage basis for each question for the Test Group and  
3 Control Group respectively, across all states tested.  
4
- 5 (b) CA Only. The third and fourth columns reported on a  
6 percentage basis for each question for the Test Group  
7 (DMV.ORG viewers) and Control Group (CAR.ORG viewers)  
8 respectively in California only.  
9
- 10 (c) All States Other Than CA. The fourth and fifth columns  
11 reported on a percentage basis for each question for the Test  
12 Group (DMV.ORG respondents) and Control Group  
13 (CAR.ORG respondents) respectively for all states other than  
14 California (combined).  
15

16 Trial Exhibit 193 constitutes this excel sheet and represents a true and correct  
17 summary of the responses to my survey.  
18

19 24. Because questions 1A/1B and 2A/2B are open-ended (Who is the  
20 affiliated entity/with whom), respondents could identify the affiliated entities in  
21 either of two orders. For example, if based upon the stimuli presented, a respondent  
22 perceived DMV.ORG to be affiliated with or sponsored by the  
23 DMV/state/government, the respondent could report that perception either by:  
24 (a) identifying DMV.ORG in response to question 1A and then identifying DMV or  
25 state or government (any of these three was deemed a DMV/state/government  
26 response) in response to 1B; OR (b) identifying DMV/state/government in response  
27 to question 1A and then identifying DMV.ORG in response to 1B. Either way, a  
28 respondent reporting such a result is expressing a perceived affiliation between

1 DMV.ORG, on the one hand, and the DMV/state/government, on the other hand,  
2 that we want to measure and report.

3  
4 25. As a result, once the answers to questions 1, 1A/1B, 2, and  
5 2A/2B were reported, we needed to report those instances in which DMV.ORG was  
6 deemed affiliated with the DMV/state/government, again regardless of the order of  
7 reported affiliation. Trial Exhibit 193 reports this data in the rows entitled  
8 "Q1A&B" (page 1, middle) and "Q2A&B" (page 2). The key results are as follows:  
9

10 (a) In both the Test Group (DMV.ORG stimuli) and Control Group  
11 (CAR.ORG stimuli), between 45-50% of respondents reported  
12 perceiving some affiliation (not leading them to the type of  
13 affiliation Maronick wanted to report). Approximately 35% in  
14 both groups reported no opinion and approximately 20% in both  
15 groups reported no perceived affiliation.

16  
17 (b) But, when the reported affiliations are probed, only 1.0% of  
18 California respondents (3/286) for the Test Group (DMV.ORG  
19 stimuli) identified DMV.ORG as affiliated with the  
20 DMV/state/government (again, in either direction). Notably, not  
21 one single respondent in the four other "non-DMV" states  
22 reported a perception that DMV.ORG was affiliated with the  
23 government.

24  
25 (c) Critically, 2.5% of California respondents (5/197) for the  
26 Control Group (CAR.ORG stimuli) identified CAR.ORG as  
27 affiliated with the DMV/state/government. And, 2.0% of  
28 respondents in other states (3/147) for the Control Group

1 (CAR.ORG stimuli) identified CAR.ORG as affiliated with the  
2 DMV/state/government. By subtracting the Control Group  
3 findings from the Test Group findings, we find no confusion  
4 that can reasonably be attributed to the use of the DMV.ORG  
5 domain name.  
6

7 (d) As for question 2, whether respondents perceived a sponsorship,  
8 not one single respondent in either the Test Group or the Control  
9 Group reported perceiving a sponsorship between DMV.ORG or  
10 CAR.ORG, respectively, and the government.  
11

12 26. It may be noted that in both the Test Group and Control Groups  
13 across all states, between 5-15% perceived the DMV/state/government as affiliated  
14 with someone, but in most cases not DMV.ORG or even CAR.ORG. Two points  
15 should be noted here: (a) only 1.0% of total respondents (3 people) perceived that  
16 DMV.ORG was affiliated with the DMV/state/government; and (b) the Control  
17 Group findings are identical meaning that whatever drives respondents to identify  
18 DMV/state/government as an affiliated entity, it is not attributable to the use of the  
19 DMV.ORG domain name. (See control discussion, supra, at ¶ 16.)  
20

21 27. Trial Exhibits 172 and 173 constitute my original report and  
22 addendum thereto in this matter, reporting these same facts.  
23  
24  
25  
26  
27  
28

28. My opinion in this matter is that this impartial survey (using proper stimuli, asking non-leading questions, using a control group, and with the absence of guessing) demonstrates conclusively that the DMV.ORG website is not perceived by the relevant universe of users to be affiliated with or endorsed by any State agency.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I executed this declaration on October 21, 2007 in Mendocino, California.

*Kenneth A. Hollander*  
KENNETH A. HOLLANDER

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I, the undersigned, declare that I am, and was at the time of service of  
4 the papers herein referred to, employed in the County of Orange; over the age of  
5 eighteen years and not a party to the within entitled action or proceeding. My  
business address is 650 Town Center Drive, 4th Floor, Costa Mesa, California  
92626-1993.

6 On **November 9, 2007**, I served the following document(s) described as:  
7 **AMENDED TRIAL DECLARATION OF KENNETH HOLLANDER** on the  
interested party(ies) in this action by placing ☒ true copies/☐ originals thereof  
8 enclosed in sealed envelopes and/or packages addressed as follows:

9 David N. Makous, Esq.  
Mina I. Hamilton, Esq.  
10 LEWIS BRISBOIS BISGAARD & SMITH LLP  
221 North Figueroa Street, Suite 1200  
Los Angeles, CA 90012  
11 Telephone: (213) 250-1800  
Facsimile: (213) 250-7900

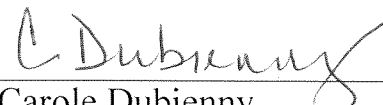
12 ☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and  
13 processing correspondence for mailing. Under that practice it would be  
14 deposited with the U.S. postal service on that same day with postage thereon  
15 fully prepaid at Costa Mesa, California in the ordinary course of business. I  
am aware that on motion of the party served, service is presumed invalid if  
16 postal cancellation date or postage meter date is more than one day after date  
of deposit for mailing in affidavit.

17 ☐ **BY FACSIMILE:** I served said document(s) to be transmitted by facsimile  
18 pursuant to Rule 2.306 of the California Rules of Court. The telephone  
19 number of the sending facsimile machine was 714-513-5130. The name(s)  
and facsimile machine telephone number(s) of the person(s) served are set  
20 forth in the service list. The sending facsimile machine (or the machine used  
to forward the facsimile) issued a transmission report confirming that the  
transmission was complete and without error. Pursuant to Rule 2.306(g)(4), a  
copy of that report is attached to this declaration.

21 ☐ **BY HAND DELIVERY:** I personally delivered such envelope(s) by hand  
22 while attending a hearing on the above-captioned matter.

23 ☒ **FEDERAL:** I declare that I am employed in the office of a member of the  
24 bar of this Court at whose direction the service was made. I declare under  
penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct.

25 Executed on **November 9, 2007**, at Costa Mesa, California.

26   
27 Carole Dubieny  
28